IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3194 of 2005

Between:

G. Shaikshavali, S/o. Haneef, occ:Cleaner, 31 years,
Faruq Nagar, Nandyal, Kurnool District.

..... PETITIONER

AND

The Regional Manager, A.P.S.R.T.C. Kurnool, Kurnool District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or directions, more in the nature of Writ of Mandamus, directing the respondent herein to grant special grade increment w.e.f. 2003 by counting the out of service period as on duty with all consequential benefits including arrears.

Counsel for the Petitioner: MR.P.GOVINDA RAJULU

Counsel for the Respondent: MR.P.VINAYAKA SWAMY (SC FOR APSRTC)

The Court at the admission stage made the following :

ORDER:

The petitioner, who is working as a Cleaner in the respondent-Corporation, is seeking a writ of mandamus directing the respondent to grant special grade

increment with effect from 2003 by counting the out of service period as on duty with all consequential benefits including the arrears.

2. The facts leading to this writ petition, in brief, are that the petitioner was appointed as a Cleaner in the year 1990 in the respondent-Corporation. He was removed from service on 19-8-1997 on the allegation of some misconduct. He challenged the order of removal before the Labour Court, Anantapur vide I.D.No. 247 of 2000 and the same was allowed on 25-6-2002 with a direction to the Depot Manager to reinstate the petitioner without back wages and to defer three annual increments with cumulative effect. In pursuance of the award, the petitioner was reinstated into service as a Cleaner by order dated 23-8-2002 by the respondent -Corporation and the petitioner has been working in such capacity in Banaganapally Depot. The petitioner submits that the respondent-Corporation issued a Circular No.PD-65/1989 dated 3-5-1989 allowing one increment as special grade on completion of 12 years of service from the date of the first appointment of the employee. As per the said circular, the respondent ought to have been granted special grade increment with effect from 2003 by counting the out of service period as on duty, which was granted by the Labour Court. In this connection, he made a representation before the authorities to refix his pay by allowing special grade increment with effect from 2003, but the same was not considered till today. Hence, the writ petition.

3. The respondent did not choose to file counter.

4. Heard both the counsel.

5. The learned counsel for the petitioner strenuously contended that there is no distinction between active service and notional service for the purpose of reckoning service for sanction of Special Grade. Adverting to the petitioner's case, he contended that he has been directed to be reinstated by the Labour Court with continuity of service and hence, he shall be deemed to be in service throughout. He relied on a judgment of this Court in T. NARAYANA V. MANAGING DIRECTIOR, APSRTC, HYDERABAD[1], which was confirmed in W.A.No.1269 of 1998 dated 13-8-1998. He also placed a strong reliance on the judgment of a Division Bench in W.A.No.2164 of 1998 dated 21-12-1998.

6. On the other hand, the learned Standing Counsel for the respondent-

Corporation contended that in the above cited cases fixation of pay on the date of reinstatement by taking into account notional increments which the employee would have earned during the period of out of employment was considered, whereas the issue raised in this case is different so much that the legality of the Circular issued by the corporation for taking into account only active service for the purpose of sanction of Special Grade or stagnation increments. He further submits that the above case law is not applicable to the facts of this case and strenuously contended that there is no illegality in the above Circular, as the employer is not entitled to prescribe a different norm to an employee, who has been reinstated into service by virtue of an award of Labour Court vis-à-vis other regular employees, who have rendered continuous active service without any blemish and the impugned Circular is neither discriminatory nor violative of Articles 14 and 16 of the Constitution.

7. During the course of hearing, the learned counsel for the petitioner placed a Circular dated 3-5-1989 wherein the petitioner has been granted Special Grade with effect from 01-05-1989. It is evident that the relief sought for has been granted by the respondent-Corporation, but the grievance of the petitioner is that the authorities had not counted his continuity of service as granted by the Labour Court. As the petitioner was out of service for a period of five years and he has been reinstated by virtue of the award of the Labour Court, the above period is disregarded by virtue of the impugned circular.

8. The short question that arises for consideration is whether the period during which the petitioner was out of service prior to his reinstatement is to be counted for continuity of service for the purpose of Special grade or stagnation increments.

9. In T. NARAYANA'S case (1 supra) this Court considered a similar case where a conductor was removed from service with effect from17-11-1986 as a disciplinary measure and when the removal was challenged before the Labour Court an award directing his reinstatement with continuity of service but without back-wages was passed. He was out of employment between 17-11-1986 and the date of reinstatement in October, 1993. The question was whether that period should be taken into consideration for the purpose of fixing his wage. This Court held:

> "It is needless to state that though under the award passed by the Labour Court, the petitioner is not entitled to the back-wages, since the Labour Court has awarded continuity of service, it goes without saying that after reinstatement, the management, while fixing the wage payable to the petitioner, should take into account the continuity of service of the petitioner between 17-11-1986 and the date on which he was reinstated into service. It is well settled that whenever an Industrial Court or any other Court grants continuity of service to an employee, the effect of such grant is that the employee should be deemed to have been in service when he was out of employment. This is a legal fiction flowing from grant of continuity of service."
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> It is noteworthy that the above judgment has been confirmed in W.A.No.1269 of 1998 dated 13-8-1998 by a Division Bench of this Court".

10. In W.A.No.2164 of 1998 another Division Bench of this Court, following the decisions of this Court in W.A.No.1060 of 1998, 1321 of 1997, 395 of 1996 and W.P.No.11585 of 1988, out of which the judgment in W.A.No.395 of 1996 was confirmed in S.L.P.No.20096 of 1996 by the Apex Court, took a similar view and held that the benefit of continuity of service cannot be restricted only to the computation of seniority or for pensionary benefits.

11. Thus, it is seen that line of authorities on this question is rather uniform and it is held time and again that whenever a Labour Court directs reinstatement with continuity of service but without back-wages, the employee concerned will be entitled for all the benefits flowing from continuity of service. The only restriction is upon payment of back wages which is imposed by the Labour Court award itself.

12. Turning to the case on hand, the petitioner is seeking the benefit of continuity of service for the purpose of sanction of Special Grade, which is otherwise known as sanction of stagnation increments. It may be borne in mind that Special Grade is sanctioned taking into account the legal fiction that the employee should be deemed to be in service even during the period of suspension. Such a legal fiction has been envisaged in T.NARAYANA'S case (1 supra).

13. In the light of the aforesaid authorities and the conclusion reached by me,

can the impugned circular imposing restriction upon reckoning the above service for the purpose of sanction of special grade stand the test of law? The learned standing counsel for the respondent-Corporation sought to justify the above circular on the ground that the employees, who have been reinstated into service as per the award of the Labour Court will have to be distinguished from other employees, who have rendered normal service. On a careful consideration of the entire issue, I am unable to agree. An employee, who has succeeded before the Labour Court and who has been directed to be reinstated with continuity of service has to be treated on par with all other employees. Otherwise, a stigma will be attached to the employees who are reinstated by virtue of the award of the Labour Court, if the impugned circular is allowed to continue. In my considered view, the Circular is discriminatory and hence it is violative of Articles 14 and 16 of the Constitution.

14. In the result, the Writ Petition is allowed and the impugned circular dated 3-5-1989 is struck down being violative of Articles 14 and 16 of the Constitution and the respondent-Corporation is directed to refix the pay of the petitioner by allowing special grade increment with effect from 2003.No order as to costs.

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22-02-2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Tuesday, the Twenty Second day of February, Two thousand and five.

REGISTRAR

Copy to:

1. The Regional Manager, A.P.S.R.T.C., Kurnool, Kurnool District.
2. Two C.D. Copies.

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